

PROB. 12B
(7/93)

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

United States District Court

for the

DISTRICT OF HAWAII

APR 21 2006
at 2 o'clock and 30 min. P.M.
SUE BEITIA, CLERK

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: JOSUE CRUZ

Case Number: CR 04-00327HG-01

Name of Sentencing Judicial Officer: The Honorable Helen Gillmor
Chief U.S. District Judge

Date of Original Sentence: 2/17/2005

Original Offense: Conspiracy to Possess With Intent to Distribute a Quantity of
Methamphetamine, in violation of 21 U.S. C. §§ 841(a)(1) and 846,
a Class C felony

Original Sentence: Fourteen (14) months imprisonment, to be followed by three
(3) years supervised release with the following special conditions:
1) That the defendant shall participate in a substance abuse
program, which may include drug testing at the discretion and
direction of the Probation Office; and 2) That the defendant provide
the Probation Office access to any requested financial information.

Modified Sentence: On 3/9/2006, a Request for Modifying the Conditions of
Supervision With Consent of the Offender was filed modifying the
general conditions of supervision as follows: That the defendant
shall refrain from any unlawful use of a controlled substance.
The defendant shall submit to one drug test within 15 days of the
commencement of supervision and at least two drug tests
thereafter but no more than 8 valid drug tests per month during the
term of supervision (mandatory condition).

Type of Supervision: Supervised Release Date Supervision Commenced: 9/2/2005

PETITIONING THE COURT

☒ To modify the conditions of supervision as follows:

Prob 12B
(7/93)

Special Condition
No. 3

That the defendant shall participate in mental health counseling at the discretion and direction of the Probation Office.

CAUSE

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1. General Condition	The subject admitted to using methamphetamine on or about 3/29/2006.
2. Special Condition No. 2	The subject refused to comply with drug testing on 3/30/2006.

The subject began his term of supervised release on 9/2/2005. As a condition of supervision, the subject entered the drug aftercare and testing program at the Drug Addiction Services of Hawaii, Inc. (DASH), Hilo, Hawaii.

On 3/6/2006, the Court was notified by way of a Probation Form 12B Request to Modify the Conditions of Supervision that the subject tested positive for methamphetamine on two occasions in February. Based upon the subject's desire to address his drug addiction, the Court agreed to take no adverse action and allow the subject to enter into the Lokahi Intensive Out Patient (IOP) program.

This report concerns the following:

On 3/30/2006, a representative from DASH reported that the subject failed to appear earlier that same day to provide a urine specimen.

During the evening of 3/30/2006, the subject was telephonically contacted and questioned about his failure to provide a urine specimen. The subject claimed that he was busy working and forgot to call the DASH recorder. The subject was instructed to provide a urine specimen on 3/31/2006.

On 3/31/2006, the subject provided a urine specimen at DASH which was presumptively positive for methamphetamine. The specimen was forwarded to Scientific Testing Laboratories (STL) for confirmation testing. Upon being questioned about the positive urine specimen the subject admitted that a couple of days prior to 3/31/2006, he smoked methamphetamine. The subject acknowledged that he has a serious substance abuse problem and indicated that he was willing to enter into a residential drug treatment program.

On 3/31/2006, upon being telephonically contacted, the subject's substance abuse counselor recommended that the subject enter into residential drug treatment at the Big Island Substance Abuse Council (BISAC) Therapeutic Living Program (TLP). Additionally, the subject's counselor indicated that the subject may be suffering from depression and may benefit from mental health counseling.

On 4/13/2006, STL reported that the urine specimen submitted on 3/31/2006 was negative for methamphetamine.

On 4/13/2006, a representative from BISAC confirmed that the subject has been accepted and is scheduled to enter into the TLP program on or about Friday, 4/21/2006. The subject will remain in residential treatment for 3 months to be followed by 6 months of aftercare.

Given the subject's desire to address both his drug and mental health problems, it is respectfully recommended that the Court take no action on the violations at this time and allow the subject to participate in the BISAC TLP residential program and obtain mental health counseling. The subject will be referred to a mental health counselor for psychotherapy sessions.

Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The subject waives his right to a hearing and to assistance of counsel. The subject agrees to the modification of the conditions of supervised release. The subject's attorney and the U.S. Attorney's Office have been notified of the proposed modification and have no objections to the modification.

Respectfully submitted by,



MARK T. NUGENT
U.S. Probation Officer

Approved by:



PETER D. YOSHIHARA
Supervising U.S. Probation Officer

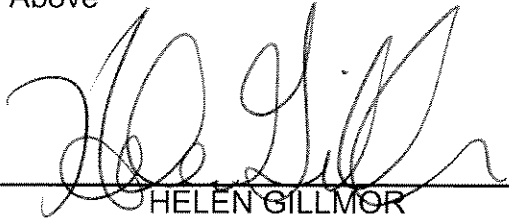
Date: 4/19/2006

Prob 12B
(7/93)

4

THE COURT ORDERS:

- ☒ The Modification of Conditions as Noted Above
☐ Other



HELEN GILLMOR
Chief U.S. District Judge

4.20.06

Date

PROB 49
(5/96)

United States District Court

District of Hawaii

Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

- ☐ To extend the term of supervision for years, for a total term of years.
☒ To modify the conditions of supervision as follows:

- 3 That the defendant shall participate in mental health counseling at the discretion and direction of the Probation Office

Witness:



BRIAN HYATT

Drug Addiction Services of Hawaii Counselor

Signed:


JOSUE CRUZ
Supervised Releasee

04/13/06
Date

RECEIVED

'06 APR 19 A 9:30

U.S. PROBATION OFFICE
HONOLULU, HAWAII

mn